

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5973 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HUSMUKH @ DUNGAJI KHETAJI PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

MR Premal R Dave for Mr VIJAY H PATEL for Petitioner
Mr Kamal M Mehta, AGP for respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/11/96

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated 18.6.1996 passed by the Commissioner of Police, Ahmedabad City with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order in exercise of powers conferred by sub-section (1) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the

Act').

2. The petitioner was served with order of detention dated 18.6.1996 along with documents. It is alleged that the petitioner was booked by the police in two offences one being CR No.120/96 of Vatva police station for offence under sections 396, 365, 347, 386 and 120 (B) and another offence being CR No 176/96 of Naranpura Police Station for offences under sections 394 and 395 of IPC. In the second case the petitioner was arrested on 22.5.1996 by police. It is stated in the grounds of detention that if the petitioner was released on bail at any point of time, he may continue to indulge in criminal anti-social activities.

3. Rule was issued in this petition on 13.8.1996 returnable on 10.9.1996. However, no reply to the petition has been filed by the respondents.

4. It is contended by the learned Advocate for the petitioner that simply because certain criminal cases have been registered against the petitioner, he cannot be branded as a "dangerous person" within the meaning of section 2(c) of the Act. The learned Advocate relies on a decision of the Apex Court in *Mustakmiya Jabbarmiya Shaikh v. M M Mehta*, Commissioner of Police & Ors., reported in 1995(3) SCC 237. This petition is being opposed by Mr K M Mehta, learned AGP. He submits that there are serious allegations against the petitioner which is evident from the facts of the two criminal cases registered against the petitioner.

5. I have considered the rival contentions of the parties and have also gone through the relevant materials on record with the assistance of the learned Advocates. Simply because some stray cases have been registered under the IPC, it cannot be said that the activities of the detainee in any manner is prejudicial to the maintenance of public order. In view of this, the petitioner cannot be branded to be "dangerous person" in order to attract provisions of the Act for his detention. Thus, in my view, the detention of the petitioner is illegal.

6. In view of the aforesaid, this Special Civil Application is allowed. Order of detention dated 18.6.1996 passed by the Commissioner of Police Ahmedabad is quashed and set aside and direct that the petitioner-detainee be set at liberty forthwith unless required for any other case.

Rule made absolute accordingly.